

DEPARTMENT OF STATE REVENUE

05-20110106.LOF

Letter of Findings Number: 05-20110106
Cigarette Tax
For the Tax Years 2007, 2008, and 2009

NOTICE: Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE**I. Tobacco Taxes: Cigarette Tax.**

Authority: IC § 6-8.1-5-1; IC § 6-7-1-1; 15 U.S.C.A. § 376; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

The taxpayer protests the proposed assessment of state cigarette tax on cigarettes purchased in 2007, 2008, and 2009.

STATEMENT OF FACTS

During the 2007, 2008, and 2009 tax years ("Tax Years"), taxpayer maintained a residence in Indiana. The Department of Revenue ("Department") received sales records for cigarettes shipped to taxpayer's Indiana residence by an out-of-state retailer ("retailer"). Those records indicated that taxpayer had not paid Indiana cigarette tax on those purchases. Based upon those records, the Department issued proposed assessments to taxpayer for unpaid cigarette tax for the Tax Years. Taxpayer filed a timely protest against those assessments. The Department conducted an administrative hearing. This Letter of Findings results. Additional facts will be provided as necessary.

I. Tobacco Taxes: Cigarette Tax.**DISCUSSION**

All tax assessments are prima facie evidence that the Department's claim for the tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

The retailer submitted sales records in order to comply with federal Jenkins Act requirements, 15 U.S.C.A. § 376, which state:

Any person who sells, transfers, or ships for profit cigarettes or smokeless tobacco in interstate commerce, whereby such cigarettes or smokeless tobacco are shipped into a State, locality, or Indian country of an Indian tribe taxing the sale or use of cigarettes or smokeless tobacco, or who advertises or offers cigarettes or smokeless tobacco for such a sale, transfer, or shipment, shall--

* * *

(2) not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes or smokeless tobacco made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, the quantity thereof, and the name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller, with all invoice or memoranda information relating to specific customers to be organized by city or town and by zip code.

Those sales records show taxpayer's name and a shipping address in Indiana. During the hearing, taxpayer confirmed that address as a residence, and confirmed taxpayer's receipt of cigarettes purchased from the retailer. Taxpayer argued that taxpayer's travel between Indiana and other states should relieve taxpayer from Indiana cigarette tax.

IC § 6-7-1-1 levies "a tax on all cigarettes sold, used, consumed, handled, or distributed within this state[.]" That statute further provides that "the liability for the excise taxes imposed by this chapter shall be conclusively presumed to be on the retail purchaser or ultimate consumer, precollected for convenience and facility only."

The retailer's sales records do not show imposition of cigarette tax on taxpayer's purchases. During the hearing, taxpayer admitted that taxpayer purchased the cigarettes from the retailer because retailer's prices offered taxpayer a better deal.

The taxpayer's additional explanation proffered during the hearing does not sufficiently refute the information received, or the results reached, by the Department's audit division. Taxpayer has failed to provide support sufficient to overcome the Department's assessment of cigarette tax on taxpayer's purchases.

FINDING

The taxpayer's protest is respectfully denied.

Posted: 07/27/2011 by Legislative Services Agency

